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11 UNITED STATES BANKRUPTCY COURT  
12  
13 NORTHERN DISTRICT OF CALIFORNIA  
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11 In re: 12 Michael E. Briggs aka Michael G. Briggs, 13 Debtor,	Bankruptcy No. 10-52795 ASW Chapter 13 OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN  Pre-Hearing Conf. Date: September 13, 2010: Pre-Hearing Conf. Time: 2:00 p.m. U.S. Bankruptcy Court 280 S. 1 <sup>st</sup> Street, Room 3020, San Jose, CA
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17 Secured Creditor Navy Federal Credit Union ("Navy") objects to confirmation of  
18 Debtor's Chapter 13 Plan, and sets forth as follows:

19 1. Navy is the holder of a home equity line of credit dated April 10, 2000 with an  
20 original credit limit in the amount of \$75,000.00 executed by Kathy M. Briggs and Debtor  
21 Michael G. Briggs (the "Note.")

22 2. The Note is secured by a first position deed of trust (the "Deed of Trust")  
23 recorded against the Debtor's principal residence located at 6110 Heathercreek Way, San  
24 Jose, CA 95123 (the "Property.")

25 3. The Debtor's Chapter 13 Plan proposes in paragraph 7 that:

26 "7. The Debtor(s) further propose pursuant to 11 USC §1322(b):  
27 Special Intentions:  
28 Navy Federal Credit Union: Debtor(s) intend to avoid lien.  
Navy Federal Credit Union: Debtor(s) intend to avoid lien."

1           4.       Under Nobelman v. American Sav. Bank (1993) 508 U.S. 324, 332, 11 U.S.C.  
2       §1322(b)(2) prohibits a Chapter 13 debtor from modifying a claim secured only by a lien on  
3       the debtor's principal residence.

4           5.       The Ninth Circuit Bankruptcy Appellate Panel has held that the Nobleman  
5       decision does not apply to holders of totally unsecured claims. Lam v. Investors Thrift (In re  
6       Lam) (9<sup>th</sup> Cir. B.A.P. 1997) 211 B.R. 36, 41. Thus, if there is even \$1 of equity, a debtor may  
7       not "strip off" a lender's lien secured only by a lien on the debtor's principal residence.

8           6.       However, before such a lien may be "stripped off," the Debtor must establish  
9       pursuant to 11 U.S.C. §506(a) that the creditor's lien is wholly unsecured:

10            "In summary, a chapter 13 debtor may, in his plan or in a separate (and usually  
11           preconfirmation) motion, seek to strip off a creditor's wholly unsecured lien through a  
12           valuation process under § 506(a) and Rules 3012 and 9014. An adversary  
13           proceeding is not required by Rule 7001 (2) unless that debtor otherwise contests the  
14           validity, extent or priority of the creditor's lien. However, the nature and substance of  
15           the request to so treat the creditor's claim and lien must be clearly and conspicuously  
16           identified and explained in the plan or motion. Service of the motion, or of the plan if  
17           the motion is subjoined, must be made on that creditor as required by Rule 7004."

18           In re Millspaugh (Bankr. Idaho 2003) 302 B.R. 90, 103-104.

19           7.       However, nothing in Debtor's plan "clearly and conspicuously" indicates that  
20       the value of the property will be determined at the confirmation hearing. Nor is there any  
21       indication that the Debtor served the Plan upon the affected creditor in compliance with  
22       Bankruptcy Rule 7004:

23            "[W]henever a chapter 13 plan proposes to strip off a lien, the treatment must be  
24           clearly and conspicuously stated in the plan. Moreover, it is not enough to serve just  
25           the plan on the affected creditors. The debtor must serve each affected creditor with  
26           the chapter 13 plan and a notice of the valuation hearing (either separately or  
27           conjoined with the notice of confirmation hearing), in compliance with Rule 7004. The  
28           notice must clearly and conspicuously set forth the proposed treatment to value the  
29           collateral and strip off the lien, and the time and date of the hearing along with the  
30           deadline to object. It must be clear that the failure to object will be deemed consent to  
31           the valuation of the collateral as stated in the plan. Millspaugh, 302 B.R. at 102. The  
32           ultimate responsibility of proper drafting and proving notice was properly given and  
33           that the relief is warranted, is on the debtor."

34           In re Pereira (Bankr. S.D. Cal. 2008) 394 B.R. 501, 506-507.

35           8.       More importantly, Navy's lien is wholly secured as a first deed of trust against  
36       the Property. According to Debtor's Schedule A, the value of the Property is \$480,000.00.

1 On April 2, 2010, Navy filed a proof of claim in the amount of \$72,666.06. Thus Navy's claim  
2 is wholly secured.

3 9. Debtor asserts in his Schedule D that Aurora Loan Services holds the first  
4 deed of trust, and Navy holds the second deed of trust. However, this is incorrect. Navy's  
5 deed of trust recorded on April 10, 2000, and has never been reconveyed or subordinated.  
6 Aurora's deed of trust recorded on January 31, 2006, and is thus junior to Navy's deed of  
7 trust.

8 10. As Navy's loan is wholly secured and therefore cannot be "stripped off,"  
9 Debtor's Chapter 13 Plan cannot be confirmed.

10 For all of the above reasons, Creditor respectfully requests that the Court deny  
11 confirmation of Debtor's Chapter 13 plan.

12 Dated: July 22, 2010

Respectfully submitted,

13 THE WOLF FIRM

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15 By: /s/ Alan Steven Wolf  
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17 Attorneys for Creditor, Navy Federal Credit  
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